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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re:	Case No. 09-51900 ASW
11 BENYAM and PAULA R. MULUGETA,	Chapter 11
12 Debtors.	Date: February 20, 2014
	Time: 2:30 p.m.
	Place: Courtroom 3020

14
15 **U.S. TRUSTEE'S SUPPLEMENT RE OBJECTION TO DEBTOR'S MOTION FOR**
16 **RECONSIDERATION OF DISMISSAL OF CHAPTER 11 CASE**

17 The United States Trustee (the "UST") hereby supplements her objection to the Debtors'
18 motion for reconsideration of the dismissal of this chapter 11 case.

19 The UST requests the Court to take judicial notice of its own records in the case. Fed. R.
20 Evid. 201, made applicable to bankruptcy proceedings pursuant to Fed. R. Bankr. P. 9017.

21 **Introduction.** The Debtors have been in chapter 11 for almost five years, and have not
22 demonstrated that they are able to propose a feasible or confirmable plan. They have misused
23 and failed to properly segregate cash collateral over this entire period. They are habitually late in
24 filing their monthly operating reports. Their latest MOR indicates that they have delinquent
25 post-petition taxes of \$54,000. They have spent all but \$12 of the Grand settlement proceeds
26 (\$93,800) in the past year, and currently have only \$1,030 in the bank. The Court recently
27 awarded professional fees and costs totaling \$34,202 to their prior counsel – the Debtors have no
28 money to pay that administrative claim. Nothing is happening in the case, and there is no reason

1 for the Debtors to continue in chapter 11 – the case should immediately be converted or
2 dismissed.

3 **Procedural history.** Debtors filed this Chapter 11 case on March 18, 2009. At the time
4 they filed, the Debtors owned several real properties in the Bay Area: (1) their residence in Palo
5 Alto (“Harker”), (2) rental property on Harrison Street in Oakland (“Harrison”), (3) rental
6 property on Grand Avenue in Oakland (“Grand”), (4) rental property on O’Keefe in East Palo
7 Alto (“O’Keefe”), (5) rental property on Chaucer in Berkeley (“Chaucer”), (6) rental property on
8 Brann Street in Oakland (“Brann”), and (7) rental property on Sevier Street in Menlo Park
9 (“Sevier”). *Schedule A.* During the course of this chapter 11 case, the Harrison, Grand and
10 O’Keefe properties have been lost to foreclosure.

11 On December 27, 2012, the Debtors’ case was dismissed by the Court, with the dismissal
12 to be effective 2/25/13. *Order Dismissing Chapter 11 Case (effective 2/25/13), Docket #727.*
13 The Debtors thereafter filed a motion to reconsider the dismissal order; the Court has
14 periodically extended the date of dismissal, which is currently 2/15/14. *See Supplemental Order*
15 *filed 1/22/14, Docket #834.*

16 After the Court first heard the Debtors’ motion for reconsideration (about a year ago), the
17 Debtors filed a combined plan and disclosure statement (*filed 4/18/13, Docket #778*). Numerous
18 objections to the proposed plan were interposed by parties in interest. The Debtors have not
19 amended the plan to address the objections, nor have there been any actions to move the plan
20 forward or properly prosecute this case.

21 At the last status conference in this case, the Court ordered the Debtors to be current on
22 their MORs by 2/7/14 or the case would be converted. On 2/7/14, the Debtors batch-filed their
23 MORs for the months of October, November and December 2013.

24 **MOR and cash collateral problems.** The latest MORs disclose that the Debtors have
25 continued to ignore cash collateral requirements. They routinely deposit rents into non-
26 segregated bank accounts, and make numerous transfers among their various accounts. For
27 example, the December 2013 MOR discloses that rents were received for the Sevier property
28 (\$1,500), the Brann property (\$1,639), and the Chaucer property (\$2,200), yet none of these rents
were deposited into the designated DIP accounts for these properties. Instead, these rents appear

1 to have been deposited into a different DIP account (#4660) and then transferred or spent by the
2 Debtors.

3 The December MOR also discloses that the Debtors have post-petition delinquent taxes
4 of \$54,000. *December 2013 MOR*, p. 2. The failure to timely pay post-petition taxes constitutes
5 cause to convert or dismiss this case, per Bankruptcy Code section 1112(b)(4)(I).

6 The December MOR also discloses that the Debtors have burned through just about the
7 entire \$93,800 they received on account of the “Grand Settlement” – only \$12 remains in the
8 account from that settlement. *December 2013 MOR*, p. 5. Debtors further disclose that they
9 have only \$1,030 in the bank. *Id.*, p. 1.

10 In addition, the Debtors have continued their habitual tardiness in filing their MORs –
11 their October, November and December 2013 MORs were batch-filed on 2/7/14. Similarly, their
12 August and September 2013 MORs were filed late, on 11/4/14 and 11/21/14, respectively.
13 These MORs are due on the 21st day of the month following the applicable month, per B.L.R.
14 2015-2. The failure to timely file the MORs is alone sufficient to constitute cause to dismiss or
15 convert this case, per Bankruptcy Code section 1112(b)(4)(F).

16 **Inability to reorganize.** The Debtors have shown no ability over the past five years to
17 reorganize their affairs. They have little income other than rents, which constitutes cash
18 collateral of the lenders. They have only \$1,030 in the bank. They owe professional fees of
19 \$9,000 to Marc Voisenal (*see Order filed 7/30/13, Docket #812*) and \$34,202 to Campeau
20 Goodsell Smith (*see Memorandum Decision filed 2/4/14, Docket #835*). There is no apparent
21 source to pay these claims. There has been no progress towards reorganization in many months.
22 The case has stalled and is going nowhere. The longer the Debtors park themselves in chapter
23 11, the deeper in debt they slide. The Court should not continue the dismissal any further.

24 Numerous courts have held that unreasonable delay in getting a plan confirmed
25 constitutes cause to convert a case to chapter 7. *See, e.g., In re Desmond*, 331 B.R. 42 (Bankr.
26 N.H. 2005) (conversion warranted where debtor was unable to effectuate a plan for almost two
27 years since filing and continued delay was prejudicial to creditors); and *In re East Coast*
28 *Airways, Ltd.*, 146 B.R. 325 (Bankr. E.D.N.Y. 1992) (where debtor had filed its petition three
years prior and was effectively out of business, conversion was warranted as debtor had no

1 reasonable likelihood of rehabilitation or ability to effectuate plan and delay was prejudicial to
2 creditors).

3 Based on the above events, and taking into account the entire case file, the UST asserts
4 that there is no reasonable likelihood of rehabilitation and cause exists to dismiss or convert
5 this case to Chapter 7.

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7 Dated: San Jose, California
8 February 11, 2014

Respectfully submitted,

9 TRACY HOPE DAVIS
UNITED STATES TRUSTEE

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